INTERNATIONAL LAW—PRIZES.

It is rather exceptional to find actual adjudication upon questions of international law, and were it only for this fact, the recent decision of the United States Supreme Court, in the case of *In re Pugnette Habana, The Sola,* 20 Sup. Ct. Rep. 290, would be of interest. But the case presents a point which has very seldom arisen, and about which there is much diversity of opinion, thus making it of particular interest. It arose out of the seizure during the recent war with Spain, of certain fishing vessels flying the Spanish flag, manned by Spaniards, but carrying no arms, and engaged only in the peaceful trade of fishermen. These vessels were condemned as prizes of war and the Supreme Court now holds their condemnation unlawful. Fuller, Harlan and McKenna, J. J., dissenting.

The question involved in this case is dependent directly upon the development of international law. It touches upon just that period in the development of a rule of law where it merges from the state of comity and custom into the actual embodiment as a recognized rule. In the early days it was a matter of comity to except fishing smacks from capture. They were the means of providing sustenance for the peasant population of a nation, and for that reason were looked upon with favor. This view was held as early as 1784, during the difficulties that arose between England and Holland. *2 Code Des Prizes* 721-901, and again during the Portugal-French troubles in 1801. *2 De Cussy Droit Maritime* 166. It was then distinctly recognized as a rule of comity and not of legal decisions, and the dissenting justices in the present case still hold to this view. But in the opinion of the court exemption of fishing smacks from capture can no longer be considered a matter of comity, but a rule of international law, to be recognized and sanctioned as such. Treating this exemption as a matter of comity possesses many obvious advantages, the surrender of which was not, perhaps, altogether wise. Yet so uniform and oft repeated does this custom seem to have been, and so in line with the general tendency of international law in its relation to the government of war, that the correctness of the court's decision can hardly be questioned.

CONSTITUTIONAL LAW—INTERFERENCE WITH INTERSTATE COMMERCE BY QUARANTINE REGULATIONS—PARTIES.

The Supreme Court in deciding the case of *State of Louisiana* v. *State of Texas et al.,* 20 Sup. Ct. Rep. 251, permits legal uncertainty to still obscure the division line at which internal police powers and

the regulation of interstate commerce overlap. The facts reveal a unique question of law. We find a complaint held demurrable in which the Governor and Health Officer of Texas, empowered by legislative authority to regulate quarantines, are alleged as unlawfully restricting interstate commerce by placing an embargo on all goods from New Orleans, under pretext of quarantine regulations because of a single case of smallpox in that city, but ulteriorly for the purpose of excluding Louisiana products for the benefit of home producers. Chief Justice Fuller, writing the opinion of the court, holds the alleged damage a grievance to the individual merchants, and not to the State. There can be no doubt of the correctness of this decision; nevertheless, the question remains: May a State at its pleasure exclude such interstate commerce as it chooses merely by advancing as a reason (either bona fide or by way of pretext) that the products are excluded as a police regulation for the health of its people. The present decision considered in connection with the 11th amendment to the Federal Constitution and the decision of the Supreme Court in the case of *State of New York* v. *State of Louisiana*, 108 U. S. 76, acquaints us with the fact that the inability of the State of Louisiana to be a proper party plaintiff in the present case is shared also by the particular merchants aggrieved, in consequence of their incapacity to sue a sovereign State. And further, the law passed by the Texas Legislature giving certain officials discretionary power to regulate quarantines is perfectly valid as a police regulation. *New York* v. *Mich.*, 11 Pet. 102, Story Const. L., 5th Ed., Vol. 2, 22 n. The wrong lying in the action of the officers in its enforcement.

A substitution of the officers instead of the State as respondents would then permit the individual merchants to bring their bill. The only difficulty remaining being the discretionary public character of respondents' official duties. But if the embargo be so unreasonable as to amount not to misdirected discretion, but to a wilful and malicious act, under pretext of discharging official duty, such officials are held amenable to suit for damages or an injunction. *Cooley on Torts*, 1880 Ed. 378, the act being "colore officio;" *Perry* v. *Reynolds*, 53 Conn.

Still the question remains if bona fide yet unreasonable police regulations interfere with interstate commerce, do the courts afford relief? The strongest argument for the negative of this question is found in the oleomargarine case, 127 U. S. 678, in which case the Supreme Court refused to inquire into the reasonableness of a law interfering with interstate commerce in forbidding the sale oleo-

margarine as a police regulation in protection of health, even though it was shown that oleomargarine was a healthful food. Judge Dillon's criticism of the case is very severe, declaring such a decision enough to make one's blood tingle. *Dillon Mun. Cor.*, p. 211 n. However, the better rule is set forth in a number of well considered cases discussed in the case of *Minn.* v. *Barber*, 136 U. S. 313. In this case an act providing for the inspection of cattle, sheep, etc., before killing was declared void as an unreasonable police regulation interfering with interstate commerce, the court making special inquiry into the reasonableness of the regulation. The weight of authority seems clearly to support the proposition that every citizen of the United States has a right to export his goods into a sister State, unless it interferes with *proper* police regulations of such State, without regard to what that State may consider a proper regulation.

Hence, in the present case, even though the Texas officials act bona fide and in the exercise of discretion, still, it seems, if the regulation be unreasonable, the New Orleans merchants might file a non-demurrable bill, alleging these facts, as the regulation must be subjected to a test of reasonableness by the court, and not determined by the bona fide exercise of State officials' discretion.

Justice Brown, in his concurring opinion, also suggests that the State of Louisiana might maintain such a bill were the embargo against the products from the entire State.

"SURVIVAL ACTS"—INSTANTANEOUS DEATH—AMOUNT OF DAMAGES.

In the case of *Broughel* v. *Southern New England Telephone Company*, 45 Atl. Rep. 435, the Supreme Court of Connecticut has established the doctrine that instantaneous death does not prevent the personal representative of the deceased from recovering substantial damages for his intestate's death occurring through defendant's negligence. The Connecticut statute belongs to that class of acts which have been called "survival acts," *i. e.*, acts providing that decedent's cause of action shall survive to the administrator or beneficiaries as distinct from those acts which create a new right of action to the beneficiaries for their loss. Under the latter class of actions, of course, the period within which death results cannot affect the cause of action, but under the "survival acts" Massachusetts and Mississippi hold that no recovery can be had where death is instantaneous, as there is no cause of action to survive an instantaneous death. This objection could be of no weight in Connecticut, as the statute was amended so that the cause of action